

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FALASHA ALI,

Plaintiff,

v.

CITY OF NORTH LAS VEGAS, et al.,

Defendants.

Case No. 2:15-CV-02171-KJD-GWF

ORDER

Presently before the Court are Defendants' Motion to Dismiss (#15) and Defendants' Motion for Sanctions and Dismissal (#32). Plaintiff filed a response in opposition (#36) to Defendants' Motions for Sanctions and Dismissal (#32).

A. Background

Plaintiff is an inmate who was housed at the North Las Vegas Detention Center (hereinafter referred to as "NLVDC") from March 2007 through November 2008. On May 16, 2016, Plaintiff filed a complaint alleging several violations of 42 USC §1983. Plaintiff's first claim for relief asserts that he was the victim of discrimination under the Americans with Disabilities Act, 42 USC §12101 (hereinafter referred to as "ADA"), for a period of time from January 2007 through November 2008 when Plaintiff was housed in secure housing unit (hereinafter referred to as "SHU") due to mental illness. Plaintiff's second claim alleges violations of various Fourteenth Amendment rights from January 2008 through November 2008, specifically, that Plaintiff was placed in SHU for more than five-hundred days, nearly twenty-four hours a day. Finally, Plaintiff's third claim alleges violations of the First, Sixth, Eighth, and Fourteenth Amendments when he was denied drug/alcohol treatment, religious services, access to the law library, communal dining, outdoor recreational activities, and

1 medical care. Plaintiff further alleges that his due process rights were violated during November
2 2008.

3 In 2:10-cv-01690-KJD-PAL (hereinafter referred to as the “prior case”) Plaintiff filed a
4 complaint on September 28, 2010 alleging substantially similar allegations as those alleged in the
5 instant matter. See Case No. 2:10-cv-01690-KJD-PAL. On January 14, 2014, the Ninth Circuit
6 issued a Mandate wherein it reversed and remanded Plaintiff’s appeal with respect to the City of
7 North Las Vegas to this Court for dismissal due to lack of proper service. See (#37 in 2:10-cv-01690-
8 KJD-PAL). This Court subsequently issued its Order on Mandate (#40 in 2:10-cv-01690-KJD-PAL),
9 complying with the order of the Ninth Circuit and dismissing the claims against the City of North
10 Las Vegas without prejudice. Plaintiff then filed an Amended Complaint (#41 in 2:10-cv-01690-
11 KJD-PAL) on May 9, 2014 after the action had been closed. The Complaint in this case was filed on
12 November 13, 2015 and served on the City on July 15, 2016. However, the Complaint was never
13 served on the other named Defendant, Joseph Chronister. The Complaint also names three Doe
14 defendants who have not been identified.

15 On August 3, 2016, Defendants filed a Motion to Dismiss, based primarily on the expiration
16 of all statutes of limitation. Plaintiff did not file a response. Rather, Plaintiff made two requests for
17 extensions of time, citing extreme difficulties he has experienced in preparing a response due to his
18 incarceration and various events occurring at the facility where he was incarcerated. The most recent
19 of those requests was filed on October 14, 2016 which indicated that due to a prison lock down, he
20 did not have access to the law library or case law. Plaintiff also requested that the Court contact the
21 prison to verify his statements.

22 Defendants submitted a declaration of Thomas Quintana, a correctional counselor at the
23 facility where Plaintiff was incarcerated at the time of the prison lock down – Florence Correctional
24 Institution (hereinafter referred to as “FCI”), with their Motion for Sanctions and Dismissal (#32).
25 Mr. Quintana confirmed the occurrence of the lock down, however, he stated in his declaration that
26 Plaintiff’s statements regarding the prison lock down were false. For instance, only the general

1 population was subject to the lock down. Plaintiff was not in the general population at that time.
 2 Rather, he was housed in SHU from August 1, 2016 through October 24, 2016, when he was
 3 transferred to another facility. During that time, Plaintiff had access to the prison's email system and
 4 electronic law library.

5 **B. Legal Standard**

6 Pursuant to Fed. R. Civ. P. 12(b)(6), a court may dismiss a Plaintiff's complaint for "failure
 7 to state a claim upon which relief can be granted." A properly pled complaint must provide "a short
 8 and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.
 9 8(a)(2); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require
 10 detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic recitation
 11 of the elements of a cause of action." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Papasan
 12 v. Allain, 478 U.S. 265, 286 (1986)). "Factual allegations must be enough to rise above the
 13 speculative level." Twombly, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint
 14 must contain sufficient factual matter to "state a claim to relief that is plausible on its face." Iqbal,
 15 129 S. Ct. at 1949 (internal citation omitted).

16 In Iqbal, the Supreme Court clarified the two-step approach district courts are to apply when
 17 considering motions to dismiss. First, the Court must accept as true all well-pled factual allegations
 18 in the complaint; however, legal conclusions are not entitled to the assumption of truth. Id. at 1950.
 19 Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not
 20 suffice. Id. at 1949. Second, the Court must consider whether the factual allegations in the
 21 complaint allege a plausible claim for relief. Id. at 1950. A claim is facially plausible when the
 22 Plaintiff's complaint alleges facts that allow the court to draw a reasonable inference that the
 23 defendant is liable for the alleged misconduct. Id. at 1949. Where the complaint does not permit the
 24 court to infer more than the mere possibility of misconduct, the complaint has "alleged—but not
 25 shown—that the pleader is entitled to relief." Id. (internal quotation marks omitted). When the
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1 claims in a complaint have not crossed the line from conceivable to plausible, Plaintiff's complaint
2 must be dismissed. Twombly, 550 U.S. at 570.

3 **C. Statute of Limitations**

4 To state a cause of action under Section 1983, the claimant must allege (1) the violation of a
5 right secured by the Constitution or laws of the United States and (2) that the alleged deprivation was
6 caused by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

7 A Section 1983 civil rights claim accrues when a party knows or has reason to know of the
8 injury which is the basis of his or her claim. In Wilson v. Garcia, 471 U.S. 261 (1985), the Supreme
9 Court held that claims based on Section 1983 are to be characterized as personal injury actions for
10 statute of limitations purposes. While federal rather than state law governs the characterization of
11 Section 1983 claims for statute of limitations purposes, the length of a limitations period as well as
12 any questions of tolling and application are to be governed by state law. Id. In Nevada, the statute of
13 limitations for a personal injury claim is two years, thus the statute of limitations for Section 1983
14 purposes is two years. See NRS 11.190(4)(e). Plaintiff's Complaint alleges incidents that occurred in
15 2007 and 2008, more than two years ago. Thus, Plaintiff has failed to bring this action within the
16 applicable statute of limitations.

17 Further, despite filing two motions for extensions of time (## 23 & 30) to respond to
18 Defendants' Motion to Dismiss – the first of which this Court granted – as of the date of this Order,
19 Plaintiff has failed to file a response within the time period established by the Court. While
20 pleadings filed by pro se parties are to be liberally construed, pro se parties must adhere to both Local
21 and Federal rules of procedure. The Court does not find that Plaintiff has adhered to these rules.
22 Further, this Court does not find that Plaintiff exhibited diligence in this matter. As a result,
23 Plaintiff's causes of action pursuant to Section 1983 are barred by the applicable two-year statute of
24 limitations and must be dismissed.

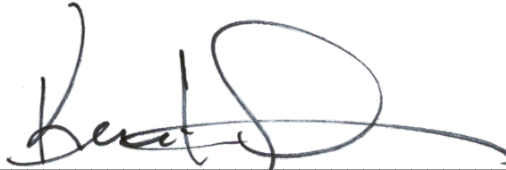
1 **E. Motion for Sanctions and Dismissal**

2 With respect to Defendants' Motion for Sanctions and Dismissal (#32), Plaintiff's response
3 was not filed within fourteen days as required by Local Rule 7-2(b). Plaintiff waited thirty days to
4 file his response. Again, the Court does not find that Plaintiff has adhered to both Local and Federal
5 rules of procedure. Further, based on Plaintiff's pattern of activity, this Court finds that Plaintiff has
6 caused substantial delay in the resolution of this matter. As a result, Defendants' Motions to Dismiss
7 are **GRANTED**.

8 Accordingly, **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss (#15) and
9 Defendants' Motion for Sanctions and Dismissal (#32) are **GRANTED**;

10 **IT IS FURTHER ORDERED** that Plaintiff's claims now pending before this Court are
11 **DISMISSED**.

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15 DATED this 22nd day of March 2017.

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18 Kent J. Dawson
19 United States District Judge
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